

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF KMC TELECOM V, INC. FOR) CASE NO. KMC-T-05-1
ADOPTION OF THE INTERCONNECTION)
AGREEMENT BETWEEN QWEST)
CORPORATION AND MCIMETRO ACCESS)
TRANSMISSION SERVICES, INC.)
PURSUANT TO 47 U.S.C. § 252(i))**

**IN THE MATTER OF THE APPLICATION)
OF KMC DATA, LLC FOR ADOPTION OF) CASE NO. KMD-T-05-1
THE INTERCONNECTION AGREEMENT)
BETWEEN QWEST CORPORATION AND)
MCIMETRO ACCESS TRANSMISSION) ORDER NO. 29857
SERVICES, INC. PURSUANT TO 47 U.S.C. §)
252(i))**

On January 24, 2005, KMC Data, LLC and KMC Telecom V, Inc. (the Companies) filed identical Applications with the Commission for the adoption of the Qwest/MCIMetro Interconnection Agreement pursuant to 47 U.S.C. § 252(i). Applications at p. 1. The Companies subsequently entered into negotiations regarding the Interconnection Agreement with Qwest, and on March 31, 2005, requested that their Applications be held in abeyance. Having had no further contact from the parties, the Commission with this Order dismisses the Companies' Applications without prejudice.

FINDINGS AND CONCLUSIONS

Based upon a review of the record in Case Nos. KMC-T-05-1 and KMD-T-05-1 the Commission makes the following findings and conclusions.

On January 24, 2005, the Companies filed identical Applications with the Commission for the adoption of the Qwest/MCIMetro Interconnection Agreement as it existed on November 21, 2002¹, pursuant to 47 U.S.C. § 252(i). The Applications state that the Companies notified Qwest of their intent to adopt the MCIMetro Agreement, but were unable to reach agreement with Qwest regarding certain terms for the agreement. Applications at p. 1.

¹ The Qwest/MCIMetro Interconnection Agreement approved by the Commission on November 21, 2002, has been amended, and subsequently approved as amended, in excess of eight times. See, Case Nos. QWE-T-02-22 and QWE-T-04-24.

On March 31, 2005, the Companies notified Commission Staff that they were attempting to negotiate the Interconnection Agreement with Qwest. The Companies asked that their Applications be held in abeyance, and stated that if their negotiations were unsuccessful they would start the process required to file with the Commission for compulsory arbitration of the interconnection agreement under the federal Telecommunications Act, 47 U.S.C. § 251 *et seq.*

The Commission Staff has had no contact or communications from the Companies since March 31, 2005. The Companies did not respond to Staff's request for updated information dated July 11, 2005. The Companies did not respond to Staff's notification dated July 25, 2005, that it would ask the Commission to dismiss the Applications.

The Commission has authority over this matter pursuant to 47 U.S.C. §§ 252(a), (e), (i), and *Idaho Code* § 62-615.

The Companies have failed to timely and adequately pursue their claims and their Applications with the Commission. The Companies have not submitted a voluntarily negotiated interconnection agreement pursuant to 47 U.S.C. § 252(a)(1). The Companies have not requested the Commission to participate in the negotiation or to mediate the negotiation pursuant to 47 U.S.C. § 252(a)(2). The Companies have not petitioned the Commission for compulsory arbitration of the agreement pursuant to 47 U.S.C. § 252(b). Based on the Companies' failure to timely and adequately pursue their claims and their filing with the Commission, the Applications should be dismissed without prejudice.


ORDER

IT IS HEREBY ORDERED that the Application of KMC Telecom V, Inc., Case No. KMC-T-05-1, is dismissed without prejudice.

IT IS FURTHER ORDERED that the Application of KMC Data LLC, Case No. KMD-T-05-1, is hereby dismissed without prejudice.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th
day of August 2005.

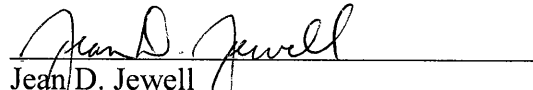


PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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